

Charges for Internet monitoring services when no tangible personal property is being transferred to the customer are not subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.101. (This is a GIL).

October 9, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 6, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are a STATE company in the process of signing up our first customer in Illinois so I wanted to get a determination on our sales tax status. I spoke with a representative from your "800" help line about the taxable status of my company's transaction in Illinois. He said we, indeed, are not taxable and to get a letter to that effect, I should write your office with the specifics. Following is a description of our company and what we do:

Company Name: AAAA

Description of Services: AAAA monitors our customers' networks for three things:

- Intrusion attempts and actual penetrations by hackers
- Service patches and updates to network software
- Updates to virus scan patterns

If we detect a problem in any of the above areas, we alert the customer to that fact, and in some cases, point them to the appropriate websites where they can download updates.

Contact: ###

Please let this letter serve as a request for a formal determination letter on this issue. Also, please feel free to contact me with any questions or clarifications. I look forward to your response.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See the enclosed copy of 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your customers, then no Illinois Retailers' Occupation Tax and Use Tax would apply.

Based upon the limited information contained in your letter, we cannot determine if your company is transferring software to its customers in conjunction with providing its monitoring services. Please note that sales of "canned" computer software are considered taxable retail sales in Illinois. See the enclosed copy of 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See subsection (c) of Section 130.1935.

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See subsection (c)(3) of Section 130.1935. If transactions for the licensing of computer software meet all of the criteria provided in (a)(1) of Section 130.1935, neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax.

Charges for updates of canned software are fully taxable pursuant to Section 130.1935. If the updates qualify as custom software under subsection (c) of Section 130.1935, they may not be taxable. But, if maintenance agreements provide for updates of canned software, and the charges for those updates are not separately stated and taxed, then the whole agreement would be taxable as sales of canned software.

Assuming that the services your company provides, such as monitoring of customers' internet systems, does not require the transfer of tangible personal property to the recipients of those services, charges for such services are exempt if they are separately stated from the selling price of canned software that may be transferred to those customers. See subsection (b) of Section 130.1935. If such services are provided in conjunction with a sale of custom computer software or a license of computer software, the charges for those services are not subject to tax.

Illinois also imposes a Telecommunications Excise Tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons. See 35 ILCS 630/3 and 4. The tax imposed is collected from the taxpayer by a retailer maintaining a place of business in this State and remitted to the Department. The Telecommunications Excise Tax Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers. See the enclosed copy of 86 Ill. Adm. Code 495.100. As long as the monitoring services you provide do not, as part of those services, charge customers for the line or other transmission charges, your company would not generally be considered to be a telecommunications retailer. See for example subsection (d) of Section 495.100.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.